

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SEVEN**

**ALTERNATIVE ENTERTAINMENT, INC.,**

Respondent,

**Case No. 07-CA-144404**

and

**JAMES DECOMMER, an individual,**

Charging Party.

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**RESPONDENT'S EXCEPTIONS TO  
ADMINISTRATIVE LAW JUDGE'S DECISION**

Respondent, Alternative Entertainment, Inc., ("AEI"), by its attorneys, Jackson Lewis P.C., pursuant to §102.46 of the National Labor Relations Board's Rules and Regulations, takes the following exceptions to the decision of the Administrative Law Judge ("ALJ"):

**EXCEPTIONS**

1. The ALJ's mischaracterization of the complaint by claiming that it alleges the Respondent violated the Act by "discharging DeCommer because he defied company managers and continued speaking with co-workers about these changes." (ALJ D., p. 1.)

2. The ALJ's reliance on a theory not alleged in the complaint to find the charging party's discharge to be unlawful.

3. The ALJ's finding that Charging Party, James DeCommer ("DeCommer"), discussed concerns regarding AEI's proposed change from unit-based rate of 82 cents to a mileage-based rate of 52 cents with "approximately 10 other technicians over the next several weeks." (ALJ D., p. 4.)

4. The ALJ's finding that DeCommer expressed concern about "the significant loss in income that POV technicians would experience." (ALJ D., p.5.)

5. The ALJ's finding that DeCommer "continued to discuss the issue with coworkers" when he advocated against the changes with AEI management. (ALJ D., p.5.)

6. The ALJ's decision to credit the testimony of DeCommer over that of Robinson that Robinson instructed him not to discuss the subject with other technicians. (ALJ D., p. 5, fns. 12, 13.)

7. The ALJ's finding that DeCommer "continued discussing compensation concerns on a daily basis with other POV technicians." (ALJ D., p. 5.)

8. The ALJ's finding that DeCommer "spoke with other field technicians and they confirmed that they would also lose money based on the changes." (ALJ D., p. 6, fn. 16.)

9. The ALJ's finding that other employees were not terminated on the same basis that AEI terminated DeCommer. (ALJ D., p. 7.)

10. The ALJ's finding that AEI's work rule prohibiting disclosure of business secrets or confidential business or customer information is facially invalid. (ALJ D., p. 6.)

11. The ALJ's finding that AEI's mandatory arbitration policy violates section 8(a)(1) of the Act. (ALJ D., p. 7.)

12. The ALJ's finding that Robinson directed DeCommer not to talk to other technicians about the compensation changes. (ALJ D. p., 9.)

13. The ALJ's finding that Robinson's "true intent" was to "compel DeCommer to stop talking about the issue with other employees, not to encourage him to speak with management, something DeCommer was clearly willing to do." (ALJ D., p. 9.)

14. The ALJ's finding that AEI "vaguely attributed" DeCommer's discharge to performance related issues. (ALJ D., p. 10.)

15. The ALJ's finding that AEI knew of DeCommer's alleged concerted activities and allegedly instructed him to stop sharing his wage concerns with coworkers. (ALJ D., p. 10.)

16. The ALJ's finding that DeCommer "continued discussing POV compensation issues with coworkers after Robinson's admonition." (ALJ D., p. 10.)

17. The ALJ's finding that Robinson administered an "unlawfully coercive admonition." (ALJ D., p. 10.)

18. The ALJ's finding that Robinson's "unlawfully coercive admonition" provided "strong circumstantial evidence" of Robinson's knowledge of DeCommer's alleged concerted, protective activity. (ALJ D., p. 10.)

19. The ALJ's finding that AEI's stated reason for discharging DeCommer was "vague and transparently pretextual." (ALJ D., p. 10.)

20. The ALJ's finding that AEI did not give DeCommer any indication that it was unsatisfied with his work in November or December. (ALJ D., p. 11.)

21. The ALJ's finding that AEI "ignored" DeCommer's inquiry for an explanation as to why he was discharged. (ALJ D., p. 11.)

22. The ALJ's finding that AEI departed from its past disciplinary practice when it discharged DeCommer. (ALJ D., p. 11.)

23. The ALJ's finding that AEI's stated explanation for DeCommer's discharge was untrue. (ALJ D., p. 11.)

24. The ALJ's finding that AEI's treatment of DeCommer was inconsistent with its treatment of other employees. (ALJ D., p. 11.)

25. The ALJ's conclusions of law 1 and 2. (ALJ D., pp. 11-12.)
26. The ALJ's proposed remedy. (ALJ D., p. 12.)
27. The ALJ's proposed order (ALJ D., pp. 12-14.)

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Dated: August 6, 2015

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### **CERTIFICATE OF SERVICE**

The undersigned affirms that on August 6, 2015, *Respondent's Exceptions to Administrative Law Judge's Decision and its Brief in Support of Exceptions* were filed with the Division of Judges through the Board's e-filing system and that copies were served on the following individuals by electronic mail to the addresses set forth below:

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